

“Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material.”

(c) An employee who has been removed from a testing designated position because of the use of illegal drugs may not be returned to such position until that employee has:

(1) Successfully completed counseling or a program of rehabilitation;

(2) Undergone a urine drug test with a negative result; and

(3) Been evaluated by the site occupational medical department, which has determined that the individual is capable of safely returning to duty.

(d) An individual who is not an employee of a contractor who has been denied unescorted access because of the use of illegal drugs may not have the unescorted access reinstated until that individual has:

(1) Provided evidence of successful completion of counseling or a program of rehabilitation;

(2) Undergone a urine drug test with a negative result; and

(3) Been evaluated by the site occupational medical department, which has determined that the individual is capable of being permitted unescorted access to a reactor control area.

(e) If a DOE access authorization is involved, DOE must be notified of a contractor's intent to return to a testing designated position an employee removed from such duty for use of illegal drugs. Positions identified in § 707.7(b)(1) and (2) will require DOE approval prior to return to a testing designated position.

(f) An individual who has been notified of a positive test result may request a retest of the same sample at the same or another certified laboratory. The individual shall bear the costs of transportation and/or testing of the specimen. The contractor will inform employees of their right to request a retest under the provisions of this paragraph.

(g) After an employee determined to have used illegal drugs has been returned to duty, the employee shall be subject to unannounced drug testing, at intervals, for a period of 12 months.

#### § 707.15 Collective bargaining.

When establishing drug testing programs, contractors who are parties to collective bargaining agreements will negotiate with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change or alter the requirements of this rule because DOE security requirements themselves are non-negotiable under the security provisions of DOE contracts. Employees covered under collective bargaining agreements will not be subject to the provisions of this rule until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the contractor will unilaterally implement the requirements of this rule.

#### § 707.16 Records.

(a) Confirmed positive test results shall be provided to the Medical Review Officer and other contractor and DOE officials with a need to know. Any other disclosure may be made only with the written consent of the individual.

(b) Contractors shall maintain maximum confidentiality of records related to illegal drug use, to the extent required by applicable statutes and regulations (including, but not limited to, 42 U.S.C. 290dd-3, 42 U.S.C. 290ee-3, and 42 CFR part 2). If such records are sought from the contractor for criminal investigations, or to resolve a question or concern relating to the Personnel Assurance Program certification or access authorization under 10 CFR part 710, any applicable procedures in statute or regulation for disclosure of such information shall be followed. Moreover, owing to DOE's express environmental, public health and safety, and national security interests, and the need to exercise proper contractor oversight, DOE must be kept fully apprised of all aspects of the contractor's program, including such information as incidents involving reasonable suspicion, occurrences, and

confirmed test results, as well as information concerning test results in the aggregate.

(c) Unless otherwise approved by DOE, the contractors shall ensure that all laboratory records relating to positive drug test results, including initial test records and chromatographic tracings, shall be retained by the laboratory in such a manner as to allow retrieval of all information pertaining to the individual urine specimens for a minimum period of five years after completion of testing of any given specimen, or longer if so instructed by DOE or by the contractor. In addition, a frozen sample of all positive urine specimens shall be retained by the laboratory for at least six months, or longer if so instructed by DOE.

(d) The contractor shall maintain as part of its medical records copies of specimen chain of custody forms.

(e) The specimen chain of custody form will contain the following information:

- (1) Date of collection;
- (2) Tested person's name;
- (3) Tested employee/applicant's social security number or other identification number unique to the individual;
- (4) Specimen number;
- (5) Type of test (random, applicant, occurrence, reasonable suspicion, follow-up, or other);
- (6) Temperature range of specimen;
- (7) Remarks regarding unusual behavior or conditions;
- (8) Collector's signature; and
- (9) Certification signature of specimen provider certifying that specimen identified is in fact the specimen the individual provided.

**§707.17 Permissible actions in the event of contractor noncompliance.**

Actions available to DOE in the event of contractor noncompliance with the provisions of this part or otherwise performing in a manner inconsistent with its approved program include, but are not limited to, suspension or debarment, contract termination, or reduction in fee in accordance with the contract terms.

**PART 708—DOE CONTRACTOR  
EMPLOYEE PROTECTION PROGRAM**

**Subpart A—General Provisions**

Sec.

- 708.1 What is the purpose of this part?
- 708.2 What are the definitions of terms used in this part?
- 708.3 What employee complaints are covered?
- 708.4 What employee complaints are not covered?
- 708.5 What employee conduct is protected from retaliation by an employer?
- 708.6 What constitutes "a reasonable fear of serious injury?"
- 708.7 What must an employee do before filing a complaint based on retaliation for refusal to participate?
- 708.8 Does this part apply to pending cases?
- 708.9 When is a complaint or other document considered to be "filed" under this part?

**Subpart B—Employee Complaint  
Resolution Process**

- 708.10 Where does an employee file a complaint?
- 708.11 Will an employee's identity be kept confidential if the employee so requests?
- 708.12 What information must an employee include in a complaint?
- 708.13 What must an employee do to show that all grievance-arbitration procedures have been exhausted?
- 708.14 How much time does an employee have to file a complaint?
- 708.15 What happens if an employee files a complaint under this part and also pursues a remedy under State or other law?
- 708.16 Will a contractor or a labor organization that represents an employee be notified of an employee's complaint and be given an opportunity to respond with information?
- 708.17 When may DOE dismiss a complaint for lack of jurisdiction or other good cause?
- 708.18 How can an employee appeal dismissal of a complaint for lack of jurisdiction or other good cause?
- 708.19 How can a party obtain review by the Secretary of Energy of a decision on appeal of a dismissal?
- 708.20 Will DOE encourage the parties to resolve the complaint informally?

**Subpart C—Investigation, Hearing and  
Decision Process**

- 708.21 What are the employee's options if the complaint cannot be resolved informally?